

HOW TO COMPLETE FORM EZ-5N

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INTRODUCTION

The purpose of the Enterprise Zone Act is to stimulate economic growth and neighborhood revitalization at the local level. The Virginia Enterprise Zone Program assists in business expansion and development in specially targeted areas throughout the state.

An enterprise zone is an economically distressed area of a county, city or town designated by the Governor and is eligible for a package of state and local incentives for a period of 20 years. The incentives are designed to encourage business start-up, recruitment and expansion through state and local tax relief, local regulatory flexibility and infrastructure development.

This manual provides instructions for "**new**" businesses on how to qualify for and request state tax incentives. A new business is a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone.

Any new business located within the boundaries of an enterprise zone is eligible to participate in the program provided certain qualification requirements are met. For more information about qualifying for local enterprise zone incentives or to determine if your business is located within the boundaries of a zone you can contact the appropriate local zone office listed in Appendix A.

PARTICIPATING IN THE VIRGINIA ENTERPRISE ZONE PROGRAM -- NEW FIRMS --

In order to determine a new firm's eligibility to receive state incentives all new firms must complete **Form EZ-5N: General Tax Credit Qualification Form**. Instructions for completing the form are presented in this manual. Form EZ-5N can be obtained from the Virginia Department of Housing and Community Development or from the Local Enterprise Zone offices listed in Appendix A.

Any business firm which qualifies for general tax credits on or after January 1 and on or before December 31 must submit an application requesting a general tax credit to DHCD no later than May 1st of the calendar year following the end of the tax year. Completed forms must be sent by certified mail or hand delivered to the:

Virginia Department of Housing and Community Development
Community Revitalization and Development Office
501 North Second Street
Richmond, Virginia 23219-1321

If you have any questions about qualifying for state incentives or other aspects of the program, please call **(804) 371-7058**.

DEFINITIONS

Average number of permanent full-time employees means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods:

1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal work-days during the payroll period. Paid leave time may be counted as work time.
2. For a business firm that uses different payroll periods for different classes of employees, the average number of permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.

Base taxable year (for purposes of qualifying for the general tax credit) means either of the two taxable years immediately preceding the first year of qualification, at the choice of the business firm.

Business firm means any business entity, incorporated or unincorporated, which is authorized to do business in the Commonwealth of Virginia and which is subject to State individual income tax, State corporate income tax, State franchise or license tax on gross receipts, or State bank franchise tax on net taxable capital.

1. The term "business firm" includes partnerships and small business corporations electing to be taxed under Subchapter S of the Federal Internal Revenue Code, and which are not subject to State income tax as partnerships or corporations, but the taxable income of which is passed through to and taxed as income of individual partners and shareholders.
2. The term "business firm" does not include organizations which are exempt from State income tax on all income except unrelated business taxable income as defined in the Federal Internal Revenue Code, Section 512; nor does it include homeowners associations as defined in the Federal Internal Revenue Code, Section 528.

Common control means those firms as defined by Internal Revenue Code § 52(b).

Department means the Department of Housing and Community Development.

Employee of a zone establishment means a person employed by a business firm who is on the payroll of the firm's establishment(s) within the zone. If an employee is on the payroll of two or more establishments of the firm, both inside and outside the zone, the term "employee of a zone establishment" refers only to such an employee assigned to the firm's zone establishment(s) for at least one-half of his/her normally scheduled work days.

Establishment means a single physical location where business is conducted and services or industrial operations are performed.

1. A central administrative office is one primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.
2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm.

Existing business firm means one that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone. An existing business firm is also one that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business in the Commonwealth and continues its operations.

Family means (i) one or more persons living in a single residence who are related by blood, marriage or adoption. A stepchild or stepparent shall be considered to be related by marriage; (ii) one or more persons not living in the same residence but who were claimed as a dependent on another person's Federal Income Tax Return for the previous year shall be presumed, unless otherwise demonstrated, part of the other person's family; or (iii) an individual 18 or older who receives less than 50% of his support from the family, and who is not the principal earner nor the spouse of the principal earner, shall not be considered a member of the family. Such an individual shall be considered a family of one.

Family income means all income actually received by all family members over 16 from the following sources:

1. gross wages and salary (before deductions);
2. net self-employment income (gross receipts minus operating expenses);
3. interest and dividend earnings; and
4. other money income received from net rents, Old Age and Survivors Insurance (OASI), social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from family income:

1. non-cash benefits such as food stamps and housing assistance;
2. public assistance payments;
3. disability payments;
4. unemployment and employment training benefits;
5. capital gains and losses; and
6. one-time unearned income.

When computing family income, income of a spouse and/or other family members shall be counted for the portion of the income determination period that the person was actually a part of the family.

Family size means the largest number of family members during the income determination period.

Income determination period means the 12 months immediately preceding the month in which the person was hired.

Independent certified public accountant means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking to qualify for State tax incentives or grants under this Program.

Large qualified business firm means a qualified business firm making qualified zone investments in excess of \$15 million when such investments result in the creation of at least 50 permanent full-time positions.

Low-income person means a person who is employed in a permanent full-time position with a business firm in an enterprise zone that is seeking qualification for enterprise zone incentives and whose family income was less than or equal to 80% of area median family income during the income determination period. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident.

Median family income means the dollar amount, adjusted for family size, as determined annually by the Department for the city or county in which the zone is located.

Net loss applies to firms that relocate or expand operations and means that (i) after relocating into an enterprise zone, a business firm's gross permanent full-time employment is less than before relocating into the zone; or (ii) after a business firm locates or expands within a zone, its gross permanent full-time employment at its non-zone location(s) is less than before the zone location occurred.

New business means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone.

Payroll period means the period of time for which a business firm normally pays its employees.

Permanent full-time employee means a person employed by a business firm who is normally scheduled to work either (i) a minimum of thirty-five hours per week for the entire normal year of the business firm's operations, which a normal year must consist of at least forty-eight weeks, (ii) a minimum of thirty-five hours per week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm, or (iii) a minimum of 1,680 hours per year and the standard fringe benefits are paid by the business firm for the employee. Permanent full time employee also means two or more individuals who together share the same position and together work the normal number of hours a week as required by the business firm for that one position. Seasonal, temporary, leased or contract labor positions, or employees shifted from an existing location in the Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time employees.

Qualified business firm means a business firm meeting the business firm requirements of job creation, low-income and zone resident employment specified in the enterprise regulations relating to general tax credit qualification and is designated a qualified business firm by the Department (see program qualification requirements on page 6).

Related party means those as defined by Internal Revenue Code § 267(b).

Seasonal employment means any employee who normally works on a full-time basis and whose customary annual employment is less than 9 months. For example, individuals hired by a CPA firm during the tax return season in order to process returns and who work full-time over a three month period are seasonal employees.

Small qualified business firm means any qualified business firm other than a large qualified business firm.

Tax due means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission.

Taxable year means the year in which the tax due on State taxable income, State taxable gross receipts or State taxable net capital is accrued.

Transferred employee means an employee of a firm in the Commonwealth who is relocated to an enterprise zone facility owned or operated by that firm.

Zone means an Enterprise Zone declared by the Governor to be eligible for the benefits of this Program.

Zone resident means a person whose principal place of residency is within the boundaries of any enterprise zone. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. Zone residency must be verified annually.

VIRGINIA ENTERPRISE ZONE PROGRAM INCENTIVES AND GUIDELINES STATE INCENTIVES

Virginia's Enterprise Zone Act offers three types of tax incentives and job grants to qualified businesses. Each incentive is independent of one another and has different qualifications. Applicants interested in applying for the general tax credit, real property improvement tax credit, the investment tax credit, or job grants will need to obtain the appropriate application forms and instruction manuals from DHCD or a local zone administration office in order to apply. Below is a brief explanation of each incentive.

- (1) Ten-year *general income tax credit* against a business's state tax liability in an amount up to 80% in year one and 60% in years two through ten. For businesses investing at least \$15 million and creating 50 jobs the amount of credit is subject to negotiation between the business and DHCD. Businesses qualifying **after** July 1, 1997 must have 25% of new jobs filled by low-income individuals or zone residents. Businesses qualified **prior to** July 1, 1997 must continue to have 40% of their new jobs filled by low-income individuals or zone residents.
- (2) *Real property improvement tax credit* equal to an amount of up to 30% of qualified non-residential zone improvements with a maximum amount not to exceed \$125,000 within a five-year period. Rehabilitation and expansion projects must cost at least \$50,000 or be equal to the assessed value of the non-residential real property prior to the improvements being made, whichever is greater. Qualified improvements in non-residential new construction projects must cost at least \$250,000. The credit is refundable to the extent that if the business state tax liability is less than the credit allocated, the remaining balance would be refunded.
- (3) *Investment tax credit* against a business's state tax liability for businesses investing at least \$100 million and creating 200 jobs. The percentage amount is negotiable and could be worth up to 5% of the investment. Business firms qualifying for the investment tax credit have the option of taking this incentive *in lieu* of the real property improvement tax credit.
- (4) *Job grants* for new permanent full-time positions created by business start-ups and expansions by existing firms in amounts equal to \$1,000 per zone resident and \$500 for positions filled by a non zone resident. The maximum grant to any one firm per year is \$100,000 for three consecutive calendar years commencing with the first year. Businesses may qualify for more than one three-year job grant period provided the business firm creates additional permanent full-time positions.

STATE FISCAL LIMITATIONS - GENERAL INCOME TAX CREDIT

Applicants may only apply for credits for which they are otherwise eligible to claim during a taxable year. However, both the general tax credit and the real property tax credit for small qualified businesses and small qualified zone residents are subject to a combined annual fiscal limitation of \$16 million based on the Commonwealth's fiscal year which ends June 30th. If requests for tax credits from the \$16 million pool are exceeded, and requests from large qualified business firms and large qualified zone residents requesting tax credits from the \$3 million pool are less than \$3 million,

then any remaining funds from the \$3 million pool can be allocated. However, in the event that taxpayer requests exceed the Commonwealth's annual fiscal limitations the taxpayer shall be granted a *pro rata* amount by DHCD. No taxpayer will be treated differently when calculating the pro rata amount. Each taxpayer will receive an equitable share by dividing each taxpayer's request by the total of all taxpayer requests and multiplying the product by the fiscal limitation. The result is the actual amount of tax credit allocated to the qualified business.

In the event that a taxpayer receives an amount pro rata for the *general tax credit*, the prorated amount will be the full credit a taxpayer will be allowed for the taxable year. Any credit not useable because of proration for the taxable year the credit was allowed cannot be carried back to a preceding taxable year and is not refundable in a future year.

LOCAL INCENTIVES

Local governments provide a variety of local incentives to further encourage economic growth and investment in their enterprise zones. Local incentives determine the incentives that they will offer. For more information on the local incentives available, contact the appropriate local zone administrator listed in Appendix A.

QUALIFICATION REQUIREMENTS VIRGINIA ENTERPRISE ZONE GENERAL INCOME TAX CREDIT

A **new business firm** is a firm that establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth of Virginia by such taxpayer; or is one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone.

In order to qualify for the general income tax credit a new business firm must meet the following requirements:

1. Be located within the boundaries of a Virginia Enterprise Zone;
2. Businesses qualified **after** July 1, 1997 must have at least **25 percent** of the employment increase meet the low-income standards based on family size for the area or be zone residents. Businesses qualified **prior to** July 1, 1997, must have at least **40 percent** of the employment increase meet the low-income standards based on family size for the area or be zone residents (see Appendix D: Low-income limits by zone).
3. Maintain the 25 or 40 percent low-income or zone resident ratio of permanent full-time employees for each year during the business firm's qualification period.

Note: For purposes of calculating the 25 or 40 percent low-income or zone residency requirement, a firm can only count a new permanent full-time employee as **either** *low-income* **or** *zone resident* and **not both**.

Low-Income Status and Zone Residency

Zone residency will be subject to annual verification, while low-income status verification is only required upon initial employment. The low-income status is not based on how much the zone business pays the employee, but on how much the employee's household income was during the 12 months prior to being employed with the current business. Low-income employees will always be considered low-income even if family income changes as long as they are employed by the zone firm. Family income standards can be obtained annually from DHCD or by contacting the Local Zone Administrator.

EMPLOYMENT RESTRICTIONS

The following cannot be included in the calculation of permanent full-time employment:

1. Seasonal, temporary, leased or contract labor positions.
2. A person that was previously employed in the same job function in Virginia by a related party, or a trade or business under common control. (A person's job function which is eliminated at a non-zone location and then moved to a enterprise zone location).
3. An employee who is employed by the firm in the Commonwealth of Virginia and is transferred from outside a zone location to a zone location. In certain instances transferred employees may be included provided there is **not a net loss** in permanent full-time employment.
4. A employee whose previous job function previously qualified for a credit in connection with a different enterprise zone location on behalf of the taxpayer, a related party, or a trade or business under common control (cannot claim the same job twice).
5. A employee who was employed by a enterprise zone firm in the Commonwealth, and the trade or business was purchased by another taxpayer.

Qualifying Part-time Positions

Two or more employees who together share the same position and together work the normal number of hours a week as required by the business firm for that one position can be combined as one full-time employee.

Qualifying 1680 Hour Per Year Employees

Business firms that have employees employed in positions which require them to work a minimum of 1,680 hours during the taxable year can include these employees in the calculation of permanent full-time positions provided they meet the following requirements:

- (1) The employee must have been hired during the taxable year and worked a minimum of 1680 hours during the tax year and received the standard fringe benefits paid by the business firm, in order to be considered a permanent full-time employee. Any employee that fulfills this requirement can be included in the business firm's average number of permanent full-time employees employed during the taxable year the employee worked for the firm.

- (2) If an employee is hired during the taxable year to fill a 1680 hour position with paid fringe benefits and *does not work a minimum of 1680 hours during that taxable year*, the business firm must determine the hours worked by the employee for each payroll period. The business firm must then determine whether the employee can be averaged as a full-time employee working at least 35 hours a week during the payroll period, or whether the employee can be combine with another part-time employee that worked at least 20 hours per week during the payroll period. In this way, an employee hired to work a 1680 hour per year position with standard fringe benefits and is employed for less than a full taxable year can be included in the average number of permanent full-time employees for the taxable year the employee was hired.

Net Loss in Permanent Full-time Employment

The transfer of permanent full-time employees by a business firm from a non-zone facility to a zone facility where the transfer results in a reduction in the gross permanent full-time employment at the firm's non-zone facility would constitute a net loss. Such transferred employees cannot be included in the calculation of the average number of full-time employees employed by the business firm within the enterprise zone unless another permanent full-time employee is hired to replace the transferred employee at the non-zone facility.

GENERAL PROGRAM GUIDELINES

Timing of Zone Eligibility Period: Each enterprise zone is in effect for a period of 20 years from the date of its designation. A business firm may choose to participate in the program at any time during the existence of a zone.

Limit On Receiving State Tax Incentives: A business firm may receive state general tax credits for a period of ten consecutive tax years. If a firm fails to qualify for any year during their qualification period, the firm forfeits the right to request state tax incentives for that year. However, the firm is still eligible to qualify for state incentives for any remaining taxable years left in the qualification period.

The General Tax Credit Only Applies to Income, Net Capital or Gross Receipts Attributable to Conduct of Business Within a Zone: State tax credits apply only to taxable income; net capital; or gross premium receipts attributable to conduct of business within a zone. This means that the tax credits only apply to the tax liability of the **zone business** and is not applied to corporate or individual tax liability where revenue is derived from other sources outside the zone location. A business firm having taxable income or net capital arising from business activity both inside and outside a zone shall allocate and apportion its taxable income or net capital in accordance with the procedures provided in § 58.1-406 through 58.1-420, Code of Virginia.

General Tax Credits not to Exceed Liability: The sum of state income, net capital or gross receipts tax credits claimed under the general tax credit shall not exceed the business firm's income; net capital; or gross, or gross premium receipts liability.

Tax Credits for Partners or Shareholders of Small Business Corporations Taxed Under

Subchapter S of the Federal Internal Revenue Code: When a partnership or small business corporation taxed under Subchapter S of the Federal Internal Revenue Code is eligible for State income tax credits, each partner or shareholder may request the credit on their individual income tax in proportion to the amount of income received by the partner from the partnership or the shareholder from the corporation.

Prohibition on Re-qualification Due to Reorganization of Firm: A business firm may not qualify for the Virginia Enterprise Program longer than its original qualification period by reorganizing or changing its form in a manner that does not alter the basis of the firm's assets or result in a taxable event.

Prohibition of Duplication of Government Assistance: A business firm may not use the same expense to qualify for tax incentives under this program and qualify for tax incentives under another State program such as the Neighborhood Assistance Act.

Required Records: Business firms considering participation in the Virginia Enterprise Zone Program should keep careful records of an employee's income status and zone residency. Determination of income status should be done at the time of hiring, even if the firm does not anticipate immediate participation in the EZ Program. Obtaining income status information is relatively easy at the time of hiring by using an employee self-certification form. A sample of the self-certification form is provided in Appendix C. These records must be kept for a period of six years for audit purposes.

All firms must retain the method and information used for the calculation of base year employment. In addition, businesses whose qualification for a general tax credit includes zone residents must keep a record of the employee(s) zone residency.

SUBMISSION INSTRUCTIONS

Submission deadline for filing Form EZ-5N

Any business firm that qualifies for the general tax credit and has a tax year that ends on or after January 1 and on or before December 31 must submit an application requesting a general tax credit to DHCD no later than May 1 of the calendar year following the end of the tax year. **Note:** If any of the required submittal dates fall on a weekend or holiday, the due date will be the next business day.

- (1) DHCD will review all applications for completeness and notify business firms of any errors no later than June 1st. Business firms must respond to any unresolved issues no later than June 15th.
- (2) DHCD will notify all applicants by June 30th as to the amount of applicable general credits or real property improvements credit they may claim for the taxable year the request was made.
- (3) DHCD will certify to the Commissioner, Virginia Department of Taxation or, in the case of public service companies, to the Director of Public Service Taxation for the State Corporation Commission the applicability of the tax credits requested by the firm; and forward two copies of the certification to the firm. DHCD will also notify the firm if it fails

to qualify for state tax incentives.

- (4) Any business firm which is interested in amending past tax returns must submit an application requesting the general tax credit within three subsequent tax years immediately following the taxable year the real property was placed in service. The amount of the general tax credit the firm may be eligible for will depend on the outstanding credit balance remaining for the particular tax year the request was made. All amendment requests will be handled on a first-come, first-serve basis.
- (5) Any application submitted after the May 1st deadline will be will be treated as an application for amending a tax return. The amount of the general tax credit the firm may be eligible for will depend on the outstanding credit balance remaining for the particular tax year the request was made. All late application submittals will be handled on a first-come, first-serve basis.

HOW TO CLAIM THE GENERAL TAX CREDIT

After DHCD determines a business firm has met the qualification requirements **two copies** of a Certificate of Qualification will be sent to the qualifying firm and **should be used** as follows:

- 1. Copy for the firm's records.
- 2. Copy to be filed with the state tax return and **Form 301** Enterprise Zone Tax Credit request form.

Business firms will need to fill out Virginia Tax **Form 301 - Enterprise Zone Credit** to take advantage of the general tax credit. A copy of the Certificate must be attached to the firm's state tax return along with Form 301 in order for the Department of Taxation or the State Corporation Commission to grant the credit. When a partnership or small business corporation electing to be taxed under Subchapter S of the Federal Internal Revenue Code requests a credit against State individual income tax on behalf of its partners or shareholders, **each partner or shareholder must attach a copy of form 301 and a photocopy of the firm's Certificate of Qualification to their state individual income tax return.**

PART II

HOW TO COMPLETE EZ-5N: NEW BUSINESS TAX CREDIT QUALIFICATION FORM

HOW TO COMPLETE EZ-5N GENERAL INCOME TAX CREDIT QUALIFICATION FORM

The EZ-5N is the form used by new businesses to determine if the firm has met the Program qualification requirements to receive a general income tax credit. Form EZ-5N **must be completed and signed** by an independent certified public accountant licensed by the Commonwealth of Virginia. The CPA signature serves as prima facie evidence that a business firm is qualified to receive enterprise zone incentives. The CPA cannot be an employee of the business firm seeking to qualify for state tax incentives under this Program.

The following are step-by-step instructions for completing Form EZ-5N.

PART I: BACKGROUND INFORMATION

Item 1. On the first line enter the name of the zone where the business firm is located. For example: Richmond (South) or Newport News (Mid Cities). If a business firm is applying for general income tax credits in more than one enterprise zone, a separate Form EZ-5N must be filed for each zone.

On the second line enter the **year** the enterprise zone was designated.

On the third line enter the **month, day and year** the business began operation in the zone location. If your business was already in operation prior to the zone's designation you will need to submit Form EZ-5E.

Item 2. On the first line enter the Federal employer identification number (FEIN) that is used on your Federal income tax return. On the second line enter the Virginia Employment Commission (VEC) identification number that you use when paying the Virginia unemployment tax on employees as required by Article 2, Chapter 5, Title 60.2, Code of Virginia.

Item 3. Enter the legal name and "trading" name of the business firm. If the trading name is the same as the legal name, indicate "same."

Item 4. On the first line enter the business firm's enterprise zone street address.

On the second line enter the business activity code number which identifies the primary business activity the business is involved in. The 4-digit code number and specific groups of business activity are listed in Appendix B.

Item 5. Enter the firm's principal mailing address. The Enterprise Zone Certificate of Qualification will be mailed to this address.

Item 6. Enter the name of the contact person for the business firm and a daytime telephone number where the contact person can be reached to answer any questions.

- Item 7. Check the appropriate line to indicate the type of new business locating in the enterprise zone.
- Item 8. Check the appropriate line to indicate what type of business organization is applying for state tax credits. If the "other" line is checked, indicate what type of business organization is applying.
- Item 9. Check appropriate line to indicate the type of state tax that applies to your firm.
- Item 10. Complete this item **only** if the firm is a **subsidiary**. Enter the legal name and Federal employer identification number (FEIN) of the parent company.
- Item 11. Complete this item **only** if the firm is a **partnership** or a **small business corporation** electing to be taxed under **Subchapter S** of the Federal Internal Revenue Code. Attach a separate sheet and list the name, address, social security number and ownership percentage of each partner or shareholder. List each partner or shareholder in the same order as listed on the appropriate Federal and Virginia returns: for partnerships, Schedule E, Schedule K-1 of Form 1065 and for S Corporations, Schedule K-1 of Form 1120S and Form 500S.

PART II: QUALIFICATION INFORMATION

- Item 1. Enter the taxable year the firm is requesting enterprise zone tax incentives. A firm's taxable year is the same year used for Federal income tax purposes.

Item 2. Employment Test

How to Calculate Permanent Full-time Employment: The following example shows how the Employment Test is applied by a hypothetical new business:

Firm X is a firm conducting business in two localities within the Commonwealth, one of which is within Richmond's (South) Enterprise Zone, the other is not in an enterprise zone. Firm X began operation of the facility in Richmond's South Zone in November of 1996. Firm X has 12 payroll periods.

The employment test is a two-part test. The test examines (1) the total number of the firm's permanent full-time employees outside the zone during the year prior to the qualifying year and the qualifying taxable year to determine net loss in permanent full-time employment at its non-zone facility and (2) whether or not 25% of the average permanent full-time employment at the zone facility is either low-income individuals or zone residents.

In order for Firm X to qualify the South Zone operation as a new business, it must not have had a net loss in permanent full-time employment at its existing facility outside the zone and new permanent full-time employees must be hired to work at the zone location. Firm X's taxable year is January 1 to December 31. The firm wants to qualify for incentives for the taxable year beginning January 1, 1997 and ending December 31, 1997; this will be Firm X's qualifying taxable year.

- (a). Determine the average number of permanent full-time employees employed in Virginia**

outside the zone during the year prior to the qualifying year.

If a firm has a non-zone location and has begun a new facility in an enterprise zone and wants the business to be considered as a new business, it must address the net loss portion of the test. It first determines the average number of permanent full-time employees the firm had at its existing non-zone facility prior to the qualifying year. (If all of a new firm's facilities are located within an enterprise zone, the firm only needs to calculate average permanent full-time employment during the qualification year (Line (c) of EZ-5N). If this is the case, place **N/A** on line (a) and (b).

- 1) Count the number of permanent full-time employees the firm had during each payroll period at its location(s) outside the zone for the year prior to the first year of qualification.
- 2) Total the number of permanent full-time employees.
- 3) Divide the sum of permanent full-time employees for the location(s) outside the zone by the number of payroll periods in the year to find the average number of permanent full-time employees the firm had during the year prior to qualification at its non-zone facility(ies).

In this example, Firm X did not begin operation in Richmond's South Enterprise Zone until November of 1996 and is seeking to qualify in 1997. As part of the employment test, the firm examines its permanent full-time employment for its non-zone location for the year prior to the qualification year. In 1996, the firm determined that it had an average of 43 permanent full-time employees at the non-zone location. For this example, enter 43 on Line (a).

1996	1	2	3	4	5	6	7	8	9	10	11	12	Total	T/12
Non-Zone	46	45	45	46	43	41	42	42	42	42	42	43	519	43

PART II: QUALIFICATION INFORMATION (2. Employment Test)

- (a) Average number of permanent full-time employees who were employed by the firm at its non-zone facilities in Virginia, in the taxable year prior to the firm's initial qualification year.

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(b). Determine the average number of permanent full-time employees employed in Virginia outside the zone during the firm's qualifying taxable year:

- 1) Count the number of permanent full-time employees the firm had at its non-zone location(s) during each payroll period of the qualifying tax year.
- 2) Total the number of permanent full-time employees at the location(s).
- 3) Divide the total number of permanent full-time employees for the firm's non-zone location(s) by the total number of payroll periods in the qualifying tax year to find the average number of permanent full-time employees for the non-zone location(s).

In this example, Firm X calculated that the average number of permanent full-time employees employed in Virginia at its non-zone facility in 1997, the qualifying year, was 43. Enter 43 on Line (b).

1997	1	2	3	4	5	6	7	8	9	10	11	12	Total	T/12
Non Zone	44	47	46	46	43	42	41	42	42	42	42	43	520	43
Zone	15	15	12	12	12	12	12	10	10	12	12	12	146	12

PART II: QUALIFICATION INFORMATION (2. Employment Test)

- (b) Average number of permanent full-time employees who were employed by the firm in Virginia, outside the zone, during the qualifying taxable year.

43

Note: There must not be a net loss in the gross permanent full-time employment at the firm's location(s) outside the zone. See the definition of net loss on page 3 and the explanation on page 8. Transferred employees *cannot be included* in the calculation of the average number of full-time employees employed by the business firm within the enterprise zone unless another permanent full-time employee is hired to *replace the transferred employee* at the non-zone facility. In this example, there has not been a net loss since the number of employees outside the zone in the prior year and the qualification year is the same (43).

- (c). **Determine the average number of new permanent full-time employees employed inside the zone during the firm's qualifying taxable year:**

From the table above, Firm X determined that the average number of permanent full-time employees employed in the zone during the 1997 qualification year was 12. Enter 12 on Line (c).

PART II: QUALIFICATION INFORMATION (2. Employment Test)

- (c) Average number of permanent full-time employees who were employed by the firm's zone establishment(s) during the qualifying taxable year.

12

- (d) & (e). **Determine the average number of new permanent full-time zone employees that meet the definition of low-income or are zone residents.**

As discussed earlier, 25 percent of a new firm's permanent full-time zone employees must meet the low-income standard based on family size for the area or be residents of any enterprise zone.

Note: Firms qualified prior to July 1, 1997 must continue to meet the 40 percent low-income and/or zone resident test in order to be eligible for zone benefits.

Low-income persons are defined by the Virginia Enterprise Zone Program as persons whose **family income** for the **12 months prior** to being hired by a business located in a Enterprise Zone was **80 percent** or less of the area median income. Low-income status is not determined by the wage they are paid after being hired. Once an individual has met the low-income standard as defined by this program, they will be considered low-income as long as they are employed by the enterprise zone business, regardless of any increase in income. Area income standards can be found in Appendix D, the Local Zone Administrator can assist firms in the determination of zone residency.

A zone resident is a person whose principal place of residency is within the boundaries of any enterprise zone. Zone residency must be verified annually and can be determined based on the employee's physical address versus a post office box or where mail is received.

A business should obtain verification of the employee's income status at the time of hire. A business firm must maintain a file containing the income verifications signed by employees as proof of low-income status. An example of an employee low-income verification form can be found in Appendix C.

To determine the average number of low-income employees and zone resident employees the firm should:

- 1) Count the number of new permanent full-time employees that meet the definition of low-income or are zone residents during each payroll period of the qualifying year
- 2) Total the number of new permanent full-time low-income employees and zone residents for each payroll period.
- 3) Divide the total number of new permanent full-time low-income employees and zone residents in the qualifying year for each payroll period by the total number of payroll periods to find the average number of each.

Note: For purposes of calculating whether the firm has met the 25 or 40 percent low-income or zone residency requirement, a firm can only count a new permanent full-time employee as **either** *low-income* **or** a *zone resident* and **not both**.

DATE-OF-HIRE AND VACANCIES

The date a person is hired can affect a firm's ability to meet the low-income and zone residency test. It is very important to keep accurate records of the number of payroll periods an individual worked for the firm for each year a firm wishes to qualify for state tax incentives. The following are three examples of how an employee's date-of-hire affects a firm's ability to meet the test. Firm Z is a new firm with 12 payroll periods per year.

Scenario 1: Firm Z maintains a workforce of 30 permanent full-time employees during the firm's twelve payroll periods. Seven (7) employees were qualified as low-income persons and 1 was qualified as a zone resident [7 low-income employees for 12 payroll periods = $84 \div 12$ payroll periods = 7 average permanent full-time low-income employees. One (1) zone resident x 12 payroll periods = 12 (12 zone resident employees \div 12 payroll periods = 1 average permanent full-time zone resident employee)]. The firm has met the 25 percent low-income or zone resident requirement ($8 \div 30 = .27 \times 100 = 27\%$).

1997	1	2	3	4	5	6	7	8	9	10	11	12	Total	T/12
PFTE	30	30	30	30	30	30	30	30	30	30	30	30	360	30
Low	7	7	7	7	7	7	7	7	7	7	7	7	84	7
Zone	1	1	1	1	1	1	1	1	1	1	1	1	12	1

Scenario 2: Firm Z adds 3 full-time employees to its original 30 at the start of its seventh payroll period; one of the new hires has met the low-income standard. The 3 new employees remain on the firm's payroll for the remainder of the firm's qualifying taxable year.

Three (3) new hires will increase the average number of full-time employees during the firm's qualifying taxable year from 30 to 32 (30 employees for 6 payroll periods and 33 employees for 6 payroll periods = 378 divided by 12 = 31.5 or 32 rounded to the nearest whole number). The average number of low-income persons increases from 7 to 8 (7 employees for 6 payroll periods and 8 employees for 6 payroll periods = 90 divided by 12 = 7.5 or 8 rounded to the nearest whole number). Firm Z still has met its 25 percent requirement (8 low-income employees + 1 zone resident = 9 ÷ 32 average permanent full-time employees = 28%).

1997	1	2	3	4	5	6	7	8	9	10	11	12	Total	T/12
PFTE	30	30	30	30	30	30	33	33	33	33	33	33	378	32
Low	7	7	7	7	7	7	8	8	8	8	8	8	90	8
Zone	1	1	1	1	1	1	1	1	1	1	1	1	12	1

Scenario 3: Firm Z adds 7 permanent full-time employees to its original 30 at the start of its 8th payroll period; one of the new hires met the low-income standard based on family size and one was a zone resident. The new employees remain on the payroll for the remainder of the firm's qualifying taxable year.

1997	1	2	3	4	5	6	7	8	9	10	11	12	Total	T/12
PFTE	30	30	30	30	30	30	30	37	37	37	37	37	395	33
Low	7	7	7	7	7	7	7	8	8	8	8	8	89	7
Zone								1	1	1	1	1	0	0

Seven (7) new hires will increase the average number of permanent full-time employees during the firm's qualifying taxable year from 30 to 33 after rounding to the nearest whole number. The average number of low-income employees remains at 7 [7 low-income employees for 7 payroll periods and 8 low-income employees for 5 payroll periods = 89 ÷ 12 payroll periods = 7.42 or 7 after rounding to the nearest whole percent. The average number of zone residents is 0 (4 zone resident permanent full-time employees ÷ 12 payroll periods = .41 or 0 when rounded to the nearest whole percent). Although the firm hired 7 new employees it is not eligible to apply since it did not meet

the 25 percent low-income or zone resident requirement ($7 \text{ low-income employees} \div 35 \text{ average permanent full-time employees} = 21\%$).

Firm X. Continuing with our earlier example from page 15, Firm X determined that 9 employees met the definition of low-income and 1 was a zone resident for a total of 10 employees who met the eligibility criteria. Enter these numbers on Lines (d) and (e).

1997	1	2	3	4	5	6	7	8	9	10	11	12	Total	T/12
Low	2	4	6	7	8	12	10	10	11	13	15	15	113	9
Zone	0	0	1	1	1	1	1	1	1	1	1	1	10	1

PART II: QUALIFICATION INFORMATION (2. Employment Test)

(d) Average number of permanent full-time employees that meet the definition of low-income. 9

(e) Average number of permanent full-time employees who are zone residents. 1

(f). Total number of full-time employees who meet the definition of low-income or are zone residents.

Add Lines (d) and (e) and enter the number on Line (f) [$9+1=10$].

PART II: QUALIFICATION INFORMATION (2. Employment Test)

(f) Total number of permanent full-time employees who are low-income and zone residents. 10

(g). Determine the percent of full-time employees who meet the definition of low-income or are zone residents.

Divide the total average number of low-income and zone resident employees, Line (f), by the total number of new employees hired in the qualification year at the firm's zone establishment, Line (c), and multiply by 100 and round to the nearest whole percent.

In this example, 83% of the new permanent full-time employees hired were either low-income or zone residents ($9 \text{ low-income employees} + 1 \text{ zone resident divided by } 12 \text{ permanent full-time employees hired at the zone establishment } [10 \div 12 = .8333]$ rounded to the nearest whole percent is 83%. Enter this number on Line (g).

PART II: QUALIFICATION INFORMATION (2. Employment Test)

PART II: QUALIFICATION INFORMATION (2. Employment Test)

- (g) Percentage of the average number of new permanent full-time employees that are low-income or zone resident. Divide Line (f) by line (c) and multiply by 100, please round to the nearest whole percent.

83%

PART II: QUALIFICATION INFORMATION (3. Actual Tax Liability)

3. Enter the **actual** tax liability (**not taxable income**) attributable to the conduct of trade or business within the enterprise zone. **The amount** entered on this line **is not** to be an **estimate** but the **actual tax liability as stated on the firm's Virginia tax returns**. If a business firm is a pass-through entity and not subject to Virginia income tax, compute the tax liability as if the firm was a corporation and subject to Virginia corporation income tax. Business firms applying for this credit may have to extend their Virginia tax-filing deadline or amend their Virginia tax return in order to claim the general tax credit.

Any business firm that has taxable income from business activity both inside and outside of the enterprise zone, must allocate and apportion its Virginia taxable income attributable to the zone business as follows:

- 1) The portion of a qualified business firm's Virginia taxable income allocated and apportioned to business activities within an enterprise zone must be determined by multiplying the Virginia taxable income by a fraction, the numerator is the sum of the *property factor* and the *payroll factor*, and the denominator is two.
 - a) The *property factor* is determined by dividing the average value of real and tangible personal property of the business firm used in the enterprise zone by the average value of real and tangible personal property used by the business firm everywhere else in Virginia.
 - b) The *payroll factor* is determined by dividing the total amount paid or accrued within the enterprise zone during the taxable period by the business firm for compensation by the total compensation paid or accrued by the firm everywhere in Virginia during the same tax period.

Note: The property factor and the payroll factor must be determined in accordance with the procedures established in §§ 58.1-409 through 58.1-413 for determining the Virginia taxable income of a corporation having income from business activities both within and without of the state of Virginia.

- 2) If a qualified business firm believes that the prescribed method of allocation and apportionment would result in the business firm receiving a tax credit less than it believes is attributable to the conduct and trade of its business in the enterprise zone. The qualified business firm can request the Department of Taxation to consider an alternative method of allocation and apportionment that the firm can prove is more appropriate.

PART II: QUALIFICATION INFORMATION (4. Negotiated Amount)

4. If the business firm was involved in a negotiated general tax credit, enter the total amount that was negotiated. If no amount has been negotiated, place **N/A** on this line.

Note: Business firms investing at least \$15 million and creating 50 jobs, must have negotiated an amount of the general tax credit they may be eligible to receive.

PART III: DECLARATION

Item 1. Requests the name and signature by an official representative of the business firm authorized to sign on behalf of the firm.

Item 2. Requests an independent certified public accountant (CPA) licensed by the Commonwealth of Virginia to complete and sign the form. The CPA cannot be an employee of the business firm seeking to qualify for State tax incentives under this Program.

NOTE: Please do not forget to obtain the proper signatures on the EZ-5E. Applications either must be hand delivered by the date specified or sent by certified mail with a return receipt requested and post marked no later than the date specified. UPS or FedEx is considered hand delivery and must be hand delivered no later than the date specified.

CHECK LIST OF ATTACHMENTS

The following attachments must accompany the EZ-5N application form:

1. If the firm is a partnership or a small business corporation electing to be taxed under Subchapter S of the Federal Internal Revenue Code, attach a separate sheet that lists the name, address and social security number of each partner or shareholder. List in the same order as listed on the appropriate Federal and Virginia returns.

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

